

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BRIAN CLAYTON CHARLES,

Plaintiff,

vs.

No. CV 21-00753 MV/KK

UNITED STATES and
JACK BURKHEAD,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court under Rule 41(b) of the Federal Rules of Civil Procedure on the Civil Complaint filed by Plaintiff Brian Clayton Charles [Doc. 1]. The Court will dismiss the Complaint for failure to comply with a Court order, failure to comply with statutes and local rules, and failure to prosecute this proceeding.

Plaintiff filed this civil proceeding on August 11, 2021, alleging treason and racketeering by government officials. Doc. 1. He did not pay the \$400.00 filing fee or submit an application to proceed without prepayment of fees or costs pursuant to 28 U.S.C. § 1915. On January 28, 2022, the Court ordered Plaintiff to cure this deficiency within 30 days by either paying the \$400.00 filing fee or submitting applications to proceed *in forma pauperis*. Doc. 4. The Order advised Plaintiff that if he failed to cure the deficiency within the 30-day time period, the Court could dismiss this proceeding without further notice. *Id.* at 1. The Court also sent Plaintiff the forms for submitting an application under § 1915. *Id.* at 2. More than 30 days elapsed after entry of the

Court's Order to Cure Deficiency and Plaintiff did not pay the \$400 filing fee, submit an application to proceed under § 1915, or otherwise respond to the Court's January 28, 2022 Order.

On March 29, 2022, the Court entered an Order to Show Cause directing Plaintiff to show cause within 30 days as to why this case should not be dismissed for failure to comply with the Court's January 28, 2022 Order. Doc. 5. The Court also notified Plaintiff that if he did not respond to the Order to Show Cause, the Court could dismiss this proceeding without further notice. *Id.* at 2. More than 30 days have elapsed since entry of the Order to Show Cause and Plaintiff has not shown cause or responded to the Court's Order. Instead, mail to Plaintiff at his address of record is being returned as undeliverable. Doc. 6.

Under 28 U.S.C. §§ 1914(a) and 1915(a), the Court is required collect the filing fee from Plaintiff or authorize Plaintiff to proceed without prepayment of the fee. Plaintiff has failed to either pay the \$400.00 filing fee or submit an application to proceed under § 1915. Plaintiff has failed to comply with the Court's January 28, 2022 Order, has failed to comply with the Court's March 29, 2022 Order, and has failed to comply with §§ 1914 and 1015.

Further, it appears that Plaintiff has been transferred or released from custody without advising the Court of his new address, as required by D.N.M. LR-Civ. 83.6, thus severing contact with the Court. Pro se litigants are required to follow the federal rules of procedure and simple, nonburdensome local rules. *See Bradenburg v. Beaman*, 632 F.2d 120, 122 (10th Cir. 1980). The local rules require litigants, including prisoners, to keep the Court apprised of their proper mailing address and to maintain contact with the Court. D.N.M. LR-Civ. 83.6. Plaintiff has failed to comply with D.N.M. LR-Civ. 83.6.

The Court may dismiss an action under Rule 41(b) for failure to prosecute, or to comply with the rules of civil procedure or court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n. 3

(10th Cir. 2003). The Court will dismiss this civil proceeding pursuant to Rule 41(b) for failure to comply with the Court's Orders, failure to comply with statutes and local rules, and failure to prosecute this proceeding.

IT IS ORDERED that the Civil Complaint filed by Plaintiff Brian Clayton Charles (Doc. 1) is **DISMISSED** without prejudice under Rule 41(b) for failure to comply with the Court's Orders, statutes, and local rules, and for failure to prosecute.



HONORABLE MARTHA VÁZQUEZ
SENIOR UNITED STATES DISTRICT JUDGE